

ACT OF NON-SUPPORT IN OHIO SUFFICIENT TO EXTRADITE

In re Harris v. Sweeney, Sheriff
170 Ohio St. 151, 163 N.E.2d 762 (1959)

Appellant Harris had been arrested pursuant to an extradition warrant from Wisconsin to Ohio charging Harris with abandonment and non-support, a crime in Wisconsin. On review of a habeas corpus proceeding, the Ohio Supreme Court granted extradition holding that a person in Ohio who fails to support his child in another state where he is required to do so,¹ commits an intentional act in Ohio which results in a crime in that other state and, consequently, is extraditable under the Ohio version of section 6 of the Uniform Criminal Extradition Act, Rev. Code § 2963.06².

The *Harris* case is significant in at least two respects. First, it is a case of first-impression dealing with the Uniform Criminal Extradition Act.³ Forty-two states have adopted this uniform act, the purpose of which was to simplify extradition.⁴ Prior to the uniform act, a person need only be delivered up if he was physically present in the demanding state at the time of commission of the crime and had fled therefrom. The uniform law disposed of the necessity of showing fugitive status.⁵

The specific issue before the court in interpreting the Criminal Extradition Act was whether Harris, by failure or omitting to provide support, had "committed an act" within the purview of the statute. Judicial definitions of a wilfull or intentional act include acts for the purpose of doing another some wrong, either by commission or omission.⁶ Also considerable precedent

¹ "Any person who, without just cause, deserts or wilfully neglects or refuses to provide for the maintenance of his wife or child under eighteen (legitimate or illegitimate) in destitute or necessitous circumstances shall be fined not more than \$500, or imprisoned not more than two years, or both . . ." Wisc. Stat. § 52.05 (1955).

² "The Governor may surrender, on demand of the executive authority of any other state, any person charged in such other state in the manner provided in Section 2963.03 of the Revised Code with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and Sections 2963.01 to 2963.27 inclusive, of the Revised Code, apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom." Ohio Rev. Code § 2963.06; 9 Unif. L. Annot. 297 (1959).

³ *Supra* note 2.

⁴ 9 Unif. L. Annot. (1959 cumulation).

⁵ Art. IV, § 2, cl. 2 of the United States Constitution provides for extradition for persons ". . . who shall flee from justice . . ." This was interpreted to mean that a person need only be delivered up as a fugitive if he were physically present in the demanding state at the time of the commission of the crime and had fled therefrom. See 22 Am. Jur. "Extradition" § 21 (1939). Bauer, "Extradition Under [2963.06]," 24 Ohio Bar (No. 33) 520 (1951). The new uniform law was held to be constitutional in *Ex parte Morgan*, 78 F. Supp. 756 (S.D. Cal. 1948); *aff'd*, 175 F.2d 404, *cert. den.*, 338 U.S. 827; *English v. Matowitz*, 148 Ohio St. 39 (1947).

⁶ *People v. Bowie*, 166 N.Y.S. 905, 907 (1917).

from other jurisdictions dealing with the Uniform Criminal Extradition Act has indicated that failure to support would be considered the commission of an act for purposes of extradition under the uniform statute.⁷

The court, by way of dicta, referred to the possible alternative use of Rev. Code § 3115.04, Ohio's version of the Uniform Reciprocal Enforcement of Support Act, to secure extradition in non-support cases.⁸ The uniform law commissioners drew up this statute in a specific effort to reach a deserting husband who had absconded beyond the reach of process of the state where he had abandoned his family, in order to obtain support from him.⁹ The acuteness of the problem and the inability of conventional criminal enforcement to satisfy the need led to the adoption of some version of this act in forty-four states.¹⁰ As a result, it is fair to say that the statute was intended to be used as the most convenient vehicle for action in non-support cases.¹¹

The court, however, in discussing the Support Act, indicated that this statute would be construed exactly like the Criminal Extradition Act, i.e., non-support, for purposes of extradition, would be considered as the commission of an act.

It is questionable whether such a construction is necessary to permit extradition for non-support under the Support Act. Judge Taft, in a concurring opinion based exclusively on the Support Act, disputed this interpretation stating that neither commission of an act nor the doing of anything at all in Ohio were requisites to extradition under the Support Act.¹²

⁷ *Ex parte* Hayes, 101 Cal. App. 2d 416, 225 P.2d 272 (1950); *Ex parte* Dalton, 56 N.M. 407, 244 P.2d 790 (1952); *Roberts v. Warden of New York City Prison*, 114 N.Y.S.2d (1952); *People ex rel. Faulds v. Herberick*, 276 App. Div. 852, 93 N.Y.S.2d 272 (1949); *People ex rel. Kaufman v. O'Brien*, 197 Misc. 1019, 96 N.Y.S.2d 401 (1950); *Ex parte* Bledsoe, 93 Okla. Cr. App. 302, 227 P.2d 680 (1951). *Contra*, *United States v. Johnson*, 63 F. Supp. 615 (1945); *Stobie v. Barger*, 129 Colo. 222, 268 P.2d 409 (1954); *Ennist v. Baden*, 158 Fla. 141, 28 So. 2d 160 (1946).

⁸ "The Governor may demand from the Governor of any other state the surrender of any person charged in this state with failure to provide for the support of a person in this state and may surrender on demand by the Governor of any other state any person charged in such other state with the failure to provide for the support of a person in such other state. Sections 2963.01 to 2963.29, inclusive, and 107.04 of the Revised Code apply to the demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he has not fled therefrom. Neither the demand, the oath, nor any proceedings for extradition, pursuant to this section, need state or show that the person demanded has fled from justice, or that he was, at the time of the commission of the crime, in the demanding or other state.

"Any obligor contemplated by this section, who submits to the jurisdiction of the court of such other state and complies with the court's order for support, is relieved of extradition for desertion or non-support during the period of such compliance." Ohio Rev. Code § 3115.04; Uniform Reciprocal Enforcement of Support Act, 9C Unif. L. Annot. 23 (1959).

⁹ 9C Unif. L. Annot. 3 *et seq.* (1959).

¹⁰ 9C Unif. L. Annot. (1959 cumulation).

¹¹ For a further discussion of the Support Act see 24 Cin. L. Rev. 139 (1955); 23 Cin. L. Rev. 75 (1954); 29 Ohio Bar (No. 33) 629 (1956).

¹² 170 Ohio St. at 162.

Although both interpretations reach the same conclusion, if the extradition provision of the Support Act is to have any meaning in itself, it must be liberally construed with reference to the object to be attained, i.e., an interstate remedy for abandoned families to enable them to get the support due them.¹³ An examination of the Support Act indicates that the extradition surrender may occur whenever a person is charged in the demanding state with the failure to provide for the support of a person there. There is no necessity to go further. The charge upon which extradition is sought need only allege non-support.

If the extradition provision of the Support Act is interpreted as the majority indicates that it will be, it will add nothing to the conventional criminal extradition statute,¹⁴ since extradition for non-support will be secured by identical proofs and procedures under either. In other words, if the criminal extradition statute is going to serve the function for which the Support Act was designed, there is no necessity for the latter.

The dictum concerning the Support Act is not only confusing and unnecessary to the decision but also probably unnecessary to the successful operation of extradition for non-support under the Support Act since the thing for which extradition is sought, i.e., non-support, is a specifically named offense. What mental or physical activity or non-activity is engaged in by the violator is irrelevant to the fact that he has violated his statutory obligation of support.

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¹³ Illinois *ex rel.* Shannon v. Sterling, 248 Minn. 266, 80 N.W.2d 13 (1956).

¹⁴ *Supra* note 3.